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IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEA L NO .967 OF 2004 Single Bench

4223/04

Filed on 09/11/04
by Shri D. K. Upadhyay Advocate

APPELLANT ( In Jail )

: Santosh Kumar, Son of Sudhlu Ram, aged about 22 years, Occupation: Student, resident of village : Tal Dewri, Police Station : Jaijaipur, District : Janjgir - Champa ( C.G )

VERSUS

RESPONDENTS D.R.(J)
09/11/04

: State of Chhattisgarh through the Police Station : Champa, District : Janjgir - Champa ( CG )

MEMORANDUM OF APPEAL UND ER SECTION 374 ( 2 ) OF THE CODE OF CRIMINAL PROCEDURE, 1973.

A.F.R.

(22)

## HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

**Criminal Appeal No.967/2004**

Santosh Kumar

Vs.

State of Chhattisgarh

&

**Criminal Appeal No. 954/2004**

Gabbar Patel & two others

Vs.

State of Chhattisgarh

Appellants-Gabbar Patel & Heeralal by Shri Pushpendra Patel, Advocate.

Appellant-Lakhan Lal by Shri Gurudev Sharan, Advocate.

Appellant-Santosh Kumar by Shri V.K.Pandey, Advocate.

State by Shri U.K.S.Chandel, P.L.

### JUDGMENT

(Delivered on 13.01.2006)

This judgment shall govern Cr. Appeal No.967/2004 preferred by Santosh Kumar and Cr. Appeal No.954/2004 preferred by Gabbar Patel, Lakhan Lal and Hiralal arising out of judgment dated 13.10.2004 delivered by 3rd Addl. Sessions (Fast Track Court) in Sessions Trial No.231/2004 whereby the

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appellants in the abovementioned both the appeals were convicted under Sections 399, 402 of the I.P.C. and under Section 25(1-B)(a) and 25 (1-B) (b) of Arms Act and were sentenced to R.I. for seven years and fine amount of Rs.100/-, in default, to undergo further R.I. for one month each under Section 399 I.P.C., R.I. for seven years and to pay a fine of Rs.100/- in default to undergo further R.I. for one month each under Section 402 of the I.P.C., R.I. for three years and fine of Rs.100/-, in default of which, to under additional R.I. for one month each under Section 25(1-B)(a) and R.I. for three years and fine of Rs.100/-, in default of the same, to undergo further R.I. for one month each under Section 25(1-B)(b) of Arms Act, 1959.

2. Briefly stated the prosecution story is that Station House Officer, Police Station Champa Ramesh Pandey P.W.7 received information on the intervening night of 16th - 17th April 2004 that 6 - 7 persons of criminal antecedents had assembled near the canal in village Sonthi who were in possession of dangerous weapons and were making preparations to commit dacoity in the village. After informing the senior police officers, Ramesh Pandey left for the place of occurrence and arrested the appellants and three others. Appellant-Gabbar had in his possession one country made pistol and cartridge of 303 bore which were seized vide Ex.P.1, appellant-Hiralal was also found in possession of a country made pistol and one live cartridge which

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were seized vide Ex.P.2. One long and sharp knife having a sword-like edge on one side, in length 14 ½" was saizad from the appellant-Santosh vide Ex.P.4 and 10 jute bombs were seized from appellant-Lakhan vide Ex.P.5. From the spot one L.M.L. Freedom motor vehicle bearing No.C.G.12-B-5245 was also seized. The seized country made pistols were sent to the Reserve Inspector Police for examination vide Ex.P.17. Shri Jugal Kishore Singh, Head Constable P.W.16, on examination of the said weapons, opined that both the country made pistols were in working condition and both the cartridges were live cartridges. Upon this, sanction to prosecute the accused-appellants Gabbar Patel, Hiralal, Lakhan and Santosh along with three others was accorded by the Collector, Janjgir-Champa under Section 39 of Arms Act vide Ex.P.11.

3. After completion of investigation, the appellants were prosecuted under Sections 399, 402 of the I.P.C. and 25(1-B)(a) & 25 (1-B) (b) of Arms Act, 1959. The appellants abjured the guilt, pleaded innocence and led no evidence in defence. The prosecution examined as many as 7 witnesses. The learned trial Judge convicted and sentenced the appellants as aforesaid in paragraph 1 (supra). Co-accused Pramod Kumar, Vijay Kumar and Nirmal Kumar who were also found making preparations for committing dacoity with the above mentioned appellants were prosecuted before Juvenile Court separately.

4. Learned counsel for the appellants have placed reliance on *Chaturi Yadav and others v. State of Bihar* reported in (1979) 3 S.C.C. 430 in support of their contention that mere fact of assembly by 7 persons near the village tank and recovery of country made pistol and cartridges did not establish their guilt under Section 399 & 402 I.P.C. Reliance was also placed on *Aslam Parwez, etc., vs. Govt. of NCT of Delhi* reported in 2003 CRI.L.J.2525 (SC) in support of the contention that all the public witnesses i.e. Pramod Kumar Patel P.W.1 and Bijuram Yadav P.W.2 examined in the case did not support the prosecution story, and therefore, the trial Court erred in wholly placing reliance on the testimony of police personnel in order to fasten the liability on the accused-persons. Reliance was also placed on *Chhotey (D) and others v. State of U.P.* reported in 2004 CRI.L.J.2384 in support of their contention that the testimony of Inspector Ramesh Pandey P.W.7 did not show that the seized country made pistols, cartridges, sword-like knife and jute bombs were sealed. The appellants though alleged to have been fully armed for committing dacoity did not flee or resist their arrest by firing, and therefore, the recovery of arms and ammunitions from the appellants was not proved by reliable evidence, and therefore, the appellants were entitled to be acquitted. A decision rendered in *Shravan and others v. State of M.P.* reported in 1992 (2) VIBHA 237 was also cited in support of the contention that the conversation between the

accused persons regarding making preparations to commit dacoity was not proved, and therefore, offence under Section 399 and 402 of the I.P.C. was not established against the appellants. It was also vehemently argued that the grant of sanction for prosecuting the appellants under Section 39 of Arms Act was not duly proved. Therefore, charge under Section 25(1-B)(a) and 25(1-B)(b) of Arms Act, 1959 was also not proved against the appellants. On the other hand, the learned counsel for the State supported the judgment of the trial Court.

5. Having considered the rival contentions, I have also gone through the record of Sessions Case No. 231/2004. Neither Inspector Ramesh Pandey P.W.7 nor Constable Dhanush Kumar Pandey P.W.4 who had apprehended the appellants near the canal have deposed that they heard any such conversation of the appellants which was indicative of their preparation for committing any dacoity. It is undisputed that though the appellants were alleged to be armed with deadly weapons, yet neither any weapon was used nor any resistance offered by them. Independent public witnesses i.e. Pramod Kumar Patel P.W.1 and Bijuram Yadav P.W.2 did not support the prosecution story and stated that the police did not effect any seizure in their presence near the canal and they knew nothing about the incident. Constable Dhanush Kumar Pandey P.W.4 has in paragraph 8 stated that he could not tell as to what weapons were seized from the appellants. His statement in paragraph 8

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completely contradicts his statement in paragraph 2 that the appellants were making preparations for committing dacoity and country made pistol, *Gandasa* like knife and sword were seized. It is also pertinent to note that this witness did not state that any jute bomb was seized from any of the appellants. Coming to the testimony of Inspector Ramesh Pandey P.W.7 he also did not state that he heard the appellants making preparations for the purpose of committing dacoity. No conversation of the appellants was heard by this witness. His testimony does not show that the country made pistols, cartridges and jute bombs were sealed immediately after effecting seizure from the appellants. Even the seizure memo Exs.P.1, P.2, P.4 and P.5 does not show that the above mentioned country made pistols, cartridges, sword like knife and jute bombs were sealed.

6. Perusal of seizure memo Exs.P.1, P.2, P.4 and P.5 shows that seizure was made on 17.4.2004 and the memo sent by Inspector Ramesh Pandey to the Reserve Inspector is dated 22.5.2004. Neither seizure memo has any impression of the seal nor does the requisition Ex.P.17 sent to the Reserve Inspector shows that the weapons were sealed and sent for examination. In the absence of any corroboration from the public witnesses i.e. Pramod Kumar Patel P.W.1 and Bijuram Yadav P.W.2 and also in the absence of any evidence relating to hearing the conversation of the appellants, the seizure of the aforesaid articles from the appellants becomes extremely doubtful. *Roznamchasana* Ex.P.14

dated 17.4.2004 written by Inspector Ramesh Pandey P.W.7 clearly shows that Constable Dhanush Kumar Pandey P.W.4, and independent witnesses Pramod Kumar Patel P.W.1 and Bijuram Yadav P.W.2 were sent to the spot in complete darkness as advanced party to verify the secret information received by him and they had after verifying from the spot reported that 6 - 7 persons were conversing and making preparations to commit dacoity. However, no such evidence has been adduced by the prosecution. The testimony of Dhanush Kumar Pandey P.W.4 is wholly unreliable in view of his statement in paragraph 8.

7. In *Chaturi Yadav and others v. State of Bihar* reported in (1979) 3 S.C.C. 430 relied on by the appellants, there was no evidence to show that the appellants had assembled for the purpose of committing dacoity or they had made any preparations for committing the same. The Apex Court held that the mere fact that the appellants were found at 1.00 A.M. did not by itself prove that the appellants had assembled for the purpose of committing dacoity or making preparations to accomplish that object and further held that there was no legal evidence to support charge under Section 399 and 402 I.P.C. against the appellants. In *Chhotey (D) and others v. State of U.P.* reported in 2004 CRI.L.J.2384, none of the articles recovered from the appellants were sealed. It was held that prosecution had not succeeded in establishing the guilt of the appellants beyond reasonable doubt. In the instant case also,

the entire prosecution story seems to be highly doubtful. The recovery of the country made pistols from appellant-Gabbar Patel, Hiralal, sword-like knife from appellant Santosh and 10 jute bomb from appellant-Lakhan Kumar have also not been proved by reliable evidence. The public witnesses did not corroborate the testimony of Inspector Ramesh Pandey P.W.7. Even Dhanush Kumar Pandey P.W.4 in paragraph 8 of his testimony took a complete somersault from what he deposed in his examination-in-chief. In *Aslam Parwez, etc., vs. Govt. of NCT of Delhi* reported in 2003 CRI.L.J.2525 (SC), in a case under the Terrorists and Disruptive Activities (Prevention) Act (28 of 1987, the possession of revolver and cartridges was held to be not proved since the public witnesses examined in the case did not support the prosecution version of the incident and it was not shown that these public witnesses were in any manner connected with the accused or had any reason why they would depose falsely in order to help the appellants and would not support the prosecution case. This applies with full force to the present case also. In *Shravan and others v. State of M.P.* reported in 1992 (2) VIBHA 237, since the conversation between the accused-persons was not specifically proved as to who was being proposed to be the victim of the intended dacoity, relying on *Chaturi Yadav's* case (supra), it was held that the offence under Section 399 and 402 I.P.C. was not made out.

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8. The prosecution in this case has also not examined the sanction accorded by the District Magistrate for prosecuting the appellants vide Ex.P.11. Only one clerk M.P.Verma P.W.3 employed in the office of the District Magistrate was examined who has proved that he had put his short signatures on the sanction memo but nowhere in his evidence did he state that the sanction order was signed by the District Magistrate. In the absence of proof of valid sanction for prosecuting the appellants under Section 39 of the Arms Act. The Charge under Section 25(1-B)(a) 25(1-B)(b) of Arms Act also fails.

10. The testimony of Inspector Ramesh Pandey P.W.7 is also rendered doubtful due to the fact that though the appellants were alleged to be armed with country made pistols, cartridges and jute bombs and making preparations to commit daceity, yet they neither attempted to flee nor resorted to firing to avoid their arrest by the appellants. The prosecution evidence also does not show that any resistance was offered by the appellants in their arrest. In the abovementioned facts and circumstances of the case, this renders the prosecution story extremely doubtful.

11. After having considered the submissions made on behalf of the appellants and considering the evidence led by the prosecution in its entirety, I am of the considered opinion that the contentions raised by learned counsel for the appellants are

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well-founded and have force and the appellants are entitled to be acquitted of all charges after giving them benefit of doubt.

12. In the result, Cri.Appeal No.967/2004 and Cri.Appeal No.954/2004 are allowed. The conviction and sentences imposed against the appellants are set aside and they are acquitted of all charges. The appellants shall be set at liberty forthwith, if not required in any other case. Fine, if paid, shall be refunded to the appellants.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Anjani